

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

January 11, 2006

Agenda ID #5271
Ratesetting

TO: PARTIES OF RECORD IN APPLICATION 04-02-031

This is the proposed decision of Administrative Law Judge (ALJ) Walker, previously designated as the principal hearing officer in this proceeding. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. This matter was categorized as ratesetting and is subject to Pub. Util. Code § 1701.3(c). Pursuant to Resolution ALJ-180 a Ratesetting Deliberative Meeting to consider this matter may be held upon the request of any Commissioner. If that occurs, the Commission will prepare and mail an agenda for the Ratesetting Deliberative Meeting 10 days before hand. When an RDM is held, there is a related ex parte communications prohibition period.

The Commission may act at the regular meeting, or it may postpone action until later. If action is postponed, the Commission will announce whether and when there will be a further prohibition on communications.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN by SWAngela K. Minkin, Chief
Administrative Law Judge

ANG;jt2

Decision **DRAFT DECISION OF ALJ WALKER** (Mailed 1/11/2006)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Gridley to remove the Laurel Street crossing of the Union Pacific Railroad Company tracks and construct a new crossing in the City of Gridley, County of Butte.

Application 04-02-031
(Filed February 27, 2004)

James D. Squeri, Attorney at Law, for the City
of Gridley, applicant.

Carol A. Harris, Attorney at Law, for Union Pacific
Railroad Company, protestant.

**OPINION DENYING APPLICATION FOR RAIL CROSSING
WITHOUT PREJUDICE TO REFILING**

1. Summary

This decision grants the application of the City of Gridley (the City) to close a lightly used rail crossing but denies approval at this time for construction of a major new crossing that, while clearly needed, presents significant safety concerns. The denial of the application is without prejudice to refiling by the City of a crossing plan that more thoroughly addresses safety issues raised by the California Department of Transportation (CalTrans), Commission staff, and the Union Pacific Railroad Company (Union Pacific). This proceeding is closed.

2. Procedural Background

The City filed this application on February 27, 2004, seeking to construct an at-grade crossing of Union Pacific tracks to serve a developing Gridley Industrial Park. According to the City, the industrial park eventually will provide up to 1,000 new jobs that are needed in this rural community, where the

unemployment rate is about 13%. The application was protested by Union Pacific, which maintained that the City had not adequately addressed safety concerns related to the new crossing.

Following failed attempts with the Commission's Rail Crossings Engineering Section to resolve the dispute, the parties exchanged written testimony and participated in two days of hearing on April 19 and 20, 2005. Briefs were filed on June 27, 2005, but further proceedings were stayed on July 8, 2005, when the City and Union Pacific invoked the Commission's mediation process in an attempt to resolve outstanding issues. Mediation was conducted in October 2005, but was unsuccessful. The stay was lifted on October 17, 2005, and parties were directed to file reply briefs by November 21, 2005, at which time the application was deemed submitted for Commission consideration.

3. Proposed Rail Crossing

The City seeks an order authorizing it to construct a new roadway and at-grade railroad crossing to serve its Gridley Industrial Park being developed west of the railroad tracks. In return, the City proposes to close an existing Laurel Street railroad crossing 3,560 feet north of the proposed new crossing. The application is filed pursuant to Pub. Util. Code §§ 1201 through 1205. Section 1201 provides in pertinent part:

No public road, highway, or street shall be constructed across the track of any railroad corporation at grade ... without first having secured the permission of the commission. ... The commission may refuse its permission or grant it upon such terms and conditions as it prescribes.

Pursuant to the California Environmental Quality Act (CEQA), an Environmental Impact Report was prepared for the Gridley Industrial Park in February 2003. It identified construction of the new at-grade crossing in order to

route industrial and commercial traffic to State Route (SR) 99 directly from the industrial park. A Final Environmental Impact Report, including a traffic impact analysis prepared by kdAnderson Transportation Engineers, was issued in April 2003. A Notice of Completion was filed with the State Clearinghouse on May 12, 2002, and a notice of compliance was given on April 9, 2003. The City filed a Notice of Determination on May 12, 2003. Because our decision today denies the application for the new crossing, without prejudice to refile, we need not at this time state our concurrence as a CEQA Responsible Agency with the City's Negative Declaration.

4. Positions of the Parties

The City of Gridley is a rural and agricultural community located about 60 miles north of Sacramento on State Route 99. The community has a high rate of unemployment and a 20% poverty rate. The new industrial park has promise of creating 800 to 1,000 new jobs and the potential for spin-off business in other sections of the community. The City has begun Phase 1 of the industrial park construction, with Phase 3 of the project set for completion within the next 20 years.

The industrial park will occupy 106.6 acres in the southerly portion of the City. Thirty-eight parcels are slated for development for industrial uses, 22 of them located west of Union Pacific's rail line. The main line of Union Pacific connecting California with the Pacific Northwest separates this portion of the development from SR 99. Trucks and other vehicles traveling to and from these 22 parcels and SR 99 must cross Union Pacific's tracks.

The proposed new crossing, according to City Administrator Jack Slota, would provide necessary vehicular access to and from the industrial park and improved and safer access to SR 99 (the major truck corridor in the region). He

states that if the application is denied, the only alternative point of access to the industrial park would be an existing at-grade crossing at West Liberty Road.

Currently, the rural two-lane West Liberty crossing is the only access to the industrial park site. Union Pacific witnesses testified that, although this rail crossing is equipped with active warning devices, there is no traffic signal at the highway intersection, and the queuing or stacking distance for vehicles (about 200 feet) is insufficient to safely accommodate even existing peak traffic levels.

The City proposes to build its at-grade crossing along a new Industrial Way Road leading directly into the industrial park, while retaining the nearby rural crossing at West Liberty Road but eventually blocking access to the industrial park from that crossing. In exchange for authority to construct this new crossing, the City proposes to close an existing grade crossing at Laurel Street. However, the Laurel Street crossing has no relation to the industrial park development and does not physically connect to either SR 99 or to any truck route leading to the park. The testimony shows that the Laurel Street crossing is only lightly used.¹ The City's traffic study shows an average daily traffic (ADT) of 700 vehicles, while the proposed new crossing would have an ADT of 5,000 vehicles at full buildout.

¹ In the Traffic Impact Analysis for Gridley Industrial Park dated February 13, 2003, the City's consultant kdAnderson found that traffic currently on Laurel Street would reroute north one block to Magnolia Street, the closest crossing of the railroad tracks. The report stated: "Based on the daily traffic counts conducted, Laurel Street is currently used by parents driving children to Wilson School. This traffic will be rerouted onto Magnolia Street and will incrementally add traffic heading to and from the school. This additional minor traffic will generally occur on the trailing side of the peak hour along Magnolia Street and will dissipate within a 20-minute period." (Ex. 10.)

The Laurel Street crossing is located three-quarters of a mile to the north of the industrial park, while the West Liberty crossing is located a quarter-mile south of the point where Industrial Way would cross the tracks.

While the City states that it eventually intends to block access from the industrial park to West Liberty Road, the record is not clear as to the timing and manner in which the City proposes this partial closure. In response to the recommendation of CalTrans that the West Liberty crossing be either closed or signalized, the City in its Mitigation Measure 3.3.2b provides instead that: "Prior to Phase 3 development of the project site, the City shall demonstrate that traffic generated by such development shall not have direct access onto West Liberty Avenue." (Exhibit 11.) However, the City's witnesses testified that no plans are now in place as to how traffic barriers will be placed to block access from West Liberty to the industrial park.

Union Pacific's witnesses testified that the railroad averages 18 through freight trains per day on this line, traveling from 55 to 70 miles per hour. Amtrak operates the Coast Starlight, with two daily intercity passenger trains. Union Pacific's manager of industry and public projects testified that he met with City officials in 2002 and urged that, with opening of the new crossing, the West Liberty crossing be closed because of the short queuing distance between SR 99 and the railroad tracks. He added that because the crossing is skewed, a truck driver could find himself stacked behind other vehicles and not realize that part of his trailer was sitting on the tracks.

Scott Bacsikin (Bacsikin), vice president and traffic engineer for the engineering firm of Willdan, testified for Union Pacific, urging that the City further consider a grade-separated crossing for the industrial park under the tracks or, alternatively, closing the West Liberty crossing. Even if the City blocks

access to the industrial park from West Liberty Road, he speculated that trucks and other motorists are likely to still use the crossing and then, realizing that entry to the park is blocked, double back over the tracks to reach the new crossing, then cross the tracks a third time. He also criticized the relatively short queuing area between the West Liberty crossing and SR 99, adding:

It is never desirable to locate an at-grade rail-highway crossing near a busy intersection with a major highway due to safety issues that arise when the design fails to allow for space in the queuing area sufficient to accommodate larger vehicles. (Ex. 6, at 9.)

Bacsikin produced an exhibit prepared by the Willdan firm (attached to this decision as Attachment A) proposing that the City close the West Liberty crossing and reroute West Liberty traffic in a short detour through the industrial park to the proposed new Industrial Parkway crossing. The City has not responded to this proposal, other than to say that closing the West Liberty crossing could create a “political firestorm.”

The City’s witnesses counter that a grade-separated crossing into the industrial park is not possible because the cost (\$15 to \$20 million) far exceeds the City’s annual general fund (\$3.5 million) for all city services. It contends that closing the West Liberty crossing is not possible as a practical and political matter because rural residences and West Liberty business concerns rely on direct access to SR 99 via West Liberty Road. The City also rejects the CalTrans recommendation for traffic signals for West Liberty Road and SR 99 because of cost, proposing instead that entrance to the industrial park from West Liberty Road be blocked at some point to all traffic except emergency vehicles.

5. Discussion

Pub. Util. Code § 1201 provides that no public road, highway or street shall be constructed at grade across a railroad track without prior approval of

this Commission. The Commission has exclusive jurisdiction to require, where practicable, a separation of grades. (Pub. Util. Code § 1202.) The Commission has stated that the reason for this latter requirement is that:

Railroad grade separations constitute ultimate protection, since all grade crossing accidents and delays then are eliminated. It has long been recognized that the Commission should not grant applications for crossings at grade where there is a heavy movement of trains, unless public convenience and necessity absolutely demand such a crossing (*Mayfield v. S.P. Co.* (1913) 3 CRC 474). The advantages which might accrue by way of added convenience and financial benefit are outweighed by the dangers and hazards attendant upon a crossing at grade. Accident incidence is related to increases in the number of crossings; therefore, grade crossings should be avoided whenever it is possible to do so (*Kern County Bd. Of Supervisors* (1951) 51 CPUC 317). (*City of San Mateo* (1982) 8 CPUC2d at 580-81.)

The Commission has set the bar high for approval of a new at-grade crossing:

Today in this State a proponent who desires to construct a new at-grade crossing over mainline railroad trackage carrying any appreciable volume of passenger traffic has a very heavy burden to carry. Against the aforesaid formidable backdrop of fundamental statutory and professional opprobrium, he must convincingly show both that a separation is impracticable and that the public convenience and necessity absolutely require a crossing at grade. (*City of San Mateo, supra*, at 581.)

The proposed at-grade crossing here will traverse the mainline of the Union Pacific tracks which, on average (i) carries 18 through freight trains per day, (ii) one local train that operates six days a week, and (iii) two daily Amtrak intercity passenger trains. It is estimated that, under Year 2025 conditions, the proposed new at-grade crossing will carry about 1,600 vehicles during the

morning peak hour and about 1,800 vehicles during the afternoon peak hour, with daily average crossings of 5,000 vehicles.

The Commission has provided further guidance regarding the standards it will apply to determine whether a separated grade is practicable and whether an at-grade crossing is justified by public need and convenience, indicating that it will give consideration to the cost of a separation in comparison to the cost of an at-grade crossing.² (*In re Los Angeles to Pasadena Metro Blue Line Construction*, 2002 Cal. PUC LEXIS 301, *15.) In evaluating an application to construct an at-grade, rather than a separated crossing, the Commission has stated that it will look to the following:

- A convincing showing by applicant to eliminate all potential safety hazards;
- The concurrence of the local community authorities, including local emergency authorities;
- The opinions of the general public;
- Comparative costs of an at-grade crossing to a grade separation; and
- A recommendation by Staff that it concurs in the safety of the proposed crossing. (*In re City of Bakersfield*, 2004 Cal. PUC LEXIS 390, *10-*12.)

All parties agree that a new crossing over or under the railroad tracks into the industrial park would be the ideal way to proceed, since traffic then would be unaffected by the relatively heavy train activity, and the West Liberty crossing would be minimally affected. The City's witnesses acknowledged, however, that a grade separation was never seriously considered during the environmental

² The *Blue Line Construction* decision involved light rail transit system crossings rather than the high-speed freight and passenger rail line at issue here. The Commission's Rail Crossings Engineering Section takes the position that evidence supporting an at-grade crossing for a rail line must be much greater than that for a light-rail transit line.

review process because of its cost (\$15 to \$20 million versus \$250,000 to \$500,000 for an at-grade crossing). The City's engineer testified without contradiction that an overpass crossing was technically infeasible due to the limited distance between SR 99 and the tracks, required clearances and an excessive longitudinal slope created for the street. Apart from that, the City's claims of infeasibility were undercut by the City's engineer, who agreed with Union Pacific's engineering witness that drainage and groundwater issues associated with an undercrossing could be dealt with using available engineering techniques. More importantly, the City presented no evidence that it had investigated the availability of public funding sources such as the grade separation fund administered by this Commission and by CalTrans. While the Commission is willing to consider lack of funds as an element in the request to construct an at-grade crossing, it requires at least a showing that an applicant has thoroughly investigated funding sources for a grade-separated project before rejecting that safer alternative.

Similarly, the City has presented no evidence of the concurrence of local emergency authorities to the plan to have two rail crossings within a quarter-mile of each other. The City acknowledged that it had not yet planned when and how it would limit access to the industrial park from the West Liberty crossing. The City's witness said that he presumed that the park entrance would be barred by locked wooden gates for which fire stations and other emergency crews would have keys.

For cost reasons, the City has rejected the recommendations of CalTrans to either close the West Liberty crossing or to signalize and realign it to mitigate a likely queuing problem. Similarly, the City is considering but has not at this time

accepted the recommendation of Union Pacific to widen the proposed roadway and install larger medians for the new crossing at Industrial Park Way.

Finally, the Commission's Rail Crossings Engineering Section has not made a recommendation concurring in the safety of the proposed new at-grade crossing, but it is clear that staff has encouraged the City to consider closing of crossings more significant than the lightly used crossing at Laurel Street if it intends to add a major new crossing within city limits.

The City is candid in assessing the implications of its requests in this proceeding, stating:

Gridley recognizes that there is a natural inclination to trade any new at-grade crossing for closure of a comparable existing crossing and also expects the Commission to be skeptical about Gridley's proposal for straight-up trade of closure of the more lightly traveled Laurel St. crossing for construction of a more heavily used new at-grade crossing to serve the Gridley Industrial Park. It is also natural for the Commission to be inclined to require what it considers to be a better trade-off from a public safety perspective, i.e. closure of the problematic West Liberty crossing in exchange for authority to construct a new, needed at-grade crossing.

Despite the seeming logic of connecting construction of a new at-grade crossing with closure of the West Liberty crossing, Gridley asks the Commission to carefully consider whether insistence by the Commission on closure of West Liberty will, at the end of the day, increase or decrease the level of public safety in Gridley and its environs. If the application to construct an at-grade crossing is denied (or granted contingent upon the closing of West Liberty), the only other alternative point of access to the industrial park, i.e. the West Liberty crossing, will experience increased congestion. Traffic from the industrial park, unable to be diverted, would be routed to the existing West Liberty crossing, a much less desirable situation from both a traffic and safety standpoint. (Gridley Reply Brief, at 9-10.)

Union Pacific takes a different view of the situation:

The City's posture in this matter seems to be that the Commission's role in considering applications for new grade crossings is limited to technical review and engineering and construction details. The City argues that the Commission would be invading the traditional land use planning province of local government if it engages in second guessing the City's decision to swap out the Laurel Street crossing instead of the crossing at West Liberty. The City reasons that it should not be required to close or improve West Liberty in this proceeding because the City did not put that option on the table. But this overlooks the fact that the situation at West Liberty currently poses and will continue to pose an unacceptable risk to public safety that the Commission cannot ignore.

If applicants in crossing cases are permitted to narrowly prescribe the parameters of the Commission's inquiry, the Commission would be abdicating its statutory responsibility to promote and safeguard public safety at public grade crossings generally. The determination of whether the new grade crossing is required by public convenience and necessity requires a thorough and intensive investigation of all relevant circumstances, including the impact of the project on adjoining crossings and the ability to consider and approve alternatives that will provide a greater margin of safety but still satisfy the needs of local traffic government to improve traffic circulation. (Union Pacific Reply Brief, at 14-15; citation omitted.)

The City obviously needs the jobs and revenue that its developing industrial park promises to provide. It has done yeoman work in attracting new industry to the complex, with at least three businesses already planning construction at the site. A convenient and direct connection between the industrial park and SR 99 crossing the railroad tracks is an important part of encouraging businesses to locate in the new industrial park.

However, the City also has the burden of convincing the Commission that in proposing a new at-grade crossing, it has explored all alternatives and adopted all available measures to be certain that the crossing will not increase risks of death and injury to the public. Testimony at hearing confirmed that

California is among six states with the most public grade crossing accidents. Accident statistics maintained by the Federal Railroad Administration show that California, with 5% of the total at-grade crossings in the country, averaged 36 incidents involving fatalities and 53 injury accidents per year in highway-rail incidents during the period 2001 through 2004.³ (Ex. 4, at 5.) George L. Grochol, Union Pacific's manager of train operations for the area including Gridley, noted in his testimony that the average freight locomotive weighs between 140 and 210 tons and that it takes a 4,000-foot train traveling 40 miles per hour a distance equal to its length – 4,000 feet – to stop once the emergency brakes are applied. He testified that an engineer can do everything right and not avoid a crossing accident.

The proximity of Gridley's proposed crossing and its existing West Liberty crossing, and the undesirable queuing conditions that already exist at West Liberty, present safety concerns that this Commission must acknowledge. We believe that the City can and should do more in addressing and resolving these safety concerns. Accordingly, we will at this time deny the application for construction of the new crossing, without prejudice to the City refiling the application with additional data and alternative measures to assuage the very real safety issues that have been raised in this proceeding. We approve the City's plan to close the Laurel Street crossing.

At a minimum, a new filing by the City should (i) explore the possibility of public or other funding of a grade-separated crossing at the industrial park; (ii) determine the feasibility of a detour of West Liberty traffic through the park in a manner suggested by Attachment A; (iii) reexamine the CalTrans

³ Gridley has recorded four rail crossing accidents since 1979, including two fatalities in 1979 and 1997, and two non-injury accidents in 1978 and 1980.

recommendation for signalization of the West Liberty Road intersection with SR 99 and realignment of West Liberty Road; (iv) compile and present traffic analyses for the West Liberty Road crossing that either contradict or support closure; and (v) consider widening the new Industrial Park Way to better control traffic and prevent dangerous queuing at peak hours.

6. Categorization

This proceeding was preliminarily categorized as ratesetting on March 16, 2004 by Resolution ALJ 176-3130. We also preliminarily determined that hearings were not necessary. With the filing of the protest by Union Pacific, a hearing was deemed necessary and has been conducted. The preliminary categorization of this proceeding is confirmed, but the determination on hearings is changed to find that hearings are necessary.

7. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge (ALJ) was mailed to the applicant pursuant to Pub. Util. Code § 311(d) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

8. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner⁴ and Glen Walker is the ALJ in this proceeding.

Findings of Fact

1. Notice of the application was published in the Commission Daily Calendar on March 17, 2004.
2. Union Pacific on March 26, 2004, filed a timely protest to the application.

⁴ This proceeding has been transferred to President Peevey.

3. The City seeks authority to construct a new at-grade crossing of Union Pacific tracks on a roadway serving a developing Gridley Industrial Center.

4. The Gridley Industrial Center has the promise of providing 800 to 1,000 new jobs in this economically depressed rural community.

5. In exchange for the new at-grade crossing, the City proposes to close an existing crossing at Laurel Street.

6. The new crossing at buildout will serve an average of 5,000 vehicles daily, while the Laurel Street crossing serves 700 vehicles daily.

7. The proposed at-grade crossing will traverse the mainline of Union Pacific tracks that, on average, carries 18 freight trains per day, one local train operating six days a week, and two daily Amtrak passenger trains.

8. For cost reasons, the City has rejected the recommendations of CalTrans to either close a nearby West Liberty Road crossing or to signalize and realign it to mitigate queuing problems.

9. The City has not seriously considered a grade-separated crossing at the new industrial park because the cost (\$15 to \$20 million) far exceeds the cost of an at-grade crossing (\$250,000 to \$500,000).

10. The City has not explored the possibility of state or federal funding for a grade-separated crossing at the new industrial park.

11. The City is the CEQA lead agency for the project.

12. The Commission is a responsible agency for the project under CEQA.

13. The Commission does not at this time state its concurrence with the City's Negative Declaration under CEQA.

Conclusions of Law

1. Commission approval of new rail crossings in this state is required by Pub. Util. Code §§ 1201 through 1205.

2. A proponent of a new at-grade crossing over mainline railroad tracks has a heavy burden because of the inherent safety hazards created by roadway-railway crossings.

3. A proponent of an at-grade crossing must show that a grade-separated crossing is “impracticable.”

4. The Commission will give consideration to the cost of a grade-separated crossing provided, among other things, an applicant shows that it has made every effort to secure funds for such a crossing and makes a convincing showing that its at-grade proposal eliminates all potential safety hazards.

5. The City has not met its burden of showing that a grade-separated crossing at the new industrial park is impracticable and that public convenience and necessity absolutely require the type of crossing proposed.

6. The application for construction of the new crossing should be denied, without prejudice to a subsequent filing by the City with additional data and alternative measures to deal with the safety issues raised in this proceeding.

7. To the extent the Commission’s approval is necessary, the request to close the lightly traveled Laurel Street crossing should be granted.

O R D E R

IT IS ORDERED that:

1. The application of the City of Gridley (the City) to construct a new at-grade crossing to serve the developing Gridley Industrial Park is denied.

2. To the extent the City seeks Commission authority to close the crossing at Laurel Street in Gridley, the application is granted.

3. The denial of authority to construct the new at-grade crossing is without prejudice to a new filing by the City that more compellingly addresses safety

issues raised by the California Department of Transportation, Commission staff, and the Union Pacific Railroad Company.

4. Hearings are necessary for this proceeding.
5. Application 04-02-031 is closed.

This order is effective today.

Dated _____, at San Francisco, California.